

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN REINY JABS**, on February 15, 1999 at 3:22 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Reiny Jabs, Chairman (R)
Sen. Walter McNutt, Vice Chairman (R)
Sen. Tom A. Beck (R)
Sen. Gerry Devlin (R)
Sen. Pete Ekegren (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Greg Jergeson (D)
Sen. Ken Mesaros (R)
Sen. Linda Nelson (D)
Sen. Jon Tester (D)

Members Excused: None.

Members Absent: None.

Staff Present: Carol Masolo, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: SB 183, SB 394, SB 342

EXECUTIVE ACTION ON SB 183

Motion: SENATOR NELSON moved that **AMENDMENT SB018301.ads TO SB 183 BE ADOPTED.**

SEE EXHIBIT(ags37a01). SENATOR NELSON explained the amendments.

Vote: Motion carried unanimously.

Motion/Vote: SENATOR NELSON moved that SB 183 DO PASS AS AMENDED. Motion carried unanimously.

{Tape : 1; Side : A; Approx. Time Counter : 3.27}

EXECUTIVE ACTION ON SB 394

Motion: SENATOR TESTER moved AMENDMENT SB039401.ADS TO SB 394. SEE EXHIBIT(ags37a02). SENATOR TESTER explained the amendments.

SENATOR BECK In amendment 2, what do the repealed sections deal with?

SENATOR TESTER It deals with the organic law that was passed in the state in 1985. Deferred to Doug.

Doug Sternberg There are several sections in Title 50 which is the health code that deals with the present law regarding organic products and certification. Once the process is finally through here and the Federal Government approves a state certification program, those old sections of code would go away in lieu of the new state organic certification plan. In amendment 7, the repealer and the clean up of the other code are effective upon implementation of the state organic certification program.

SENATOR BECK Mainly, we're going to the federal definition of organic certification. Is amendment 5 the federal definition of organic?

Doug Sternberg No, that's in our state code now.

SENATOR TESTER The federal rule, as far as the definitions of organics, has not been adopted yet. They've been working on it since 1990. It's close; they came out with the rule last Spring and got enough public input they began to pull it back and rework it. The language is in the statute but the actual organic regs aren't there yet.

Doug Sternberg Present state statutes will stay on the books until this is finally run through the Federal Government for approval. It comes back and our state organic producers, processors and handlers certify they want the program and it's finally implemented on the state level. At that point these definitions and repealers take effect.

SENATOR TESTER This is enabling legislation because if the federal doesn't come down, this will never take action. Even after the federal, it has to be their choice to do it.

SENATOR HALLIGAN Normally the petitions that come through here are based on the producers. This has producers, processors and handlers. Why would you want to include handlers?

SENATOR TESTER They're the people that take it from one point of the food chain to another. They're part of the integrity of the food chain. There's sometimes a fine line between processing and handling.

SENATOR DEVLIN This just covers to our borders?

SENATOR TESTER If the federal law comes in, this will be interfacing with the federal law so it will be not only the U. S. but it will offer marketing possibilities world wide.

SENATOR DEVLIN When we worked on organics before, we could only guarantee it to the border. After that, there was no assurance from the railroads or truckers it would stay that way until it got to its destination.

SENATOR JABS When were these definitions put in the state statutes?

SENATOR TESTER 1985.

{Tape : 1; Side : A; Approx. Time Counter : 3.38}

Vote: Motion **carried unanimously.**

SENATOR TESTER offered one more set of amendments and explained them to the committee. **SEE EXHIBIT(ags37a03)**. Many of the people in the organic industry are very skeptical of government and what's transpired in the federal rule has made them more skeptical. Producers, processors and handlers may be dual certified if they choose.

Vote: Motion **carried unanimously.**

Motion: **SEN. TESTER** moved that **SB 394 DO PASS AS AMENDED.**

SENATOR HALLIGAN This won't affect people bringing their organic goods to all those little farmer's markets out there?

SENATOR TESTER No. They can still say it's organic, but if they want to say it's third party certified Montana organic, they have to be in this program.

SENATOR BECK There's another amendment here moving the 20% or more certified organic producers petitioning to 33%.

SENATOR TESTER We bumped that to 50% in the bill. We raised it to 50% if this program is going to be self funded. There's some seed money to get it going. We're going to need more like 90% of the people to be in this program to make it self funded.

Vote: Motion **carried unanimously.**

{Tape : 1; Side : B; Approx. Time Counter : 3.46}

EXECUTIVE ACTION ON SB 342

Doug Sternberg **SENATOR MESAROS** suggested an amendment that would extend the termination date from 7/1/2003 to 7/1/2005. It's necessary that we deal with the termination date one way or another because we set up a four year program and a committee with five year terms. We need to either reduce the terms or extend the length of the program. **SENATOR MESAROS** has suggested on page 9, line 21, striking July 1, 2003 and inserting 2005. He would add two years to the program.

Motion: **SEN. MESAROS** moved **AMENDMENT TO SB 342.**

Motion: **SEN. BECK** moved **SUBSTITUTE MOTION TO CUT TERM OF COMMITTEE TO FOUR YEARS.**

SENATOR MESAROS We could go both ways but obviously I would like to extend the program for another couple years. We've heard almost unified support for this program and if we're going to give this program an opportunity to get up and running, it's going to take some time. I would speak against the substitute motion.

SENATOR DEVLIN spoke in favor of the motion. I think we'd better take a look at this sooner than what they want to stretch it to.

Vote: **SUBSTITUTE MOTION carried 7-4.** Roll call vote.

Motion: **SEN. MESAROS** moved that **SB 342 DO PASS AS AMENDED.**

SENATOR HALLIGAN The consensus group should have done something in making sure outfitters or out-of-staters aren't buying sort of a lifetime lease on a conservation easement and being able to

exclude hunters from it. When we're spending public dollars on the purchase of an easement, we should make sure there is a guarantee of public access.

SENATOR TESTER I really question four million dollars, it's impact and whether it's money well spent, if what we're really trying for is to leverage some private and federal monies. If you're spending state dollars, there needs to be some benefits for the public interest.

SENATOR BECK The money in this bill is in **HB 2**. When **HB 2** comes along, I'm sure I'll move to take some of this money out. The problem I have is, suppose there's a piece of Ag land that sits right on the very outskirts of Bozeman, MT right now. Fifty years later, the town is clear around this one piece of Ag land sitting in the middle. There's no review process for this. There should be process down the road where this commission could say the piece of land should go back into division.

If you go down to Las Vegas right now, the town's got a big square right in the middle of BLM land. That land is probably worth big bucks. This is one way they could probably come back and make some money for their program. There should be a review process.

Mona Jamison There is not. When this question came up, it was made clear to us by the entities, those non-profits, at any time, if the parties agree, they can renegotiate and revisit the terms. If that happens, obviously the person would stand to make quite a bit of money if there was such pressure in the situation you discussed.

SENATOR BECK I really feel there should be a review process after a certain length of time. The Fish and Game easements are in perpetuity. The person living on the ground right now is putting that into perpetuity. If it comes to the point where the whole town has surrounded this piece of property, it does not make sense not to give it the opportunity to go back into the community.

SENATOR JERGSON In the future, who's going to be owning and operating agricultural land. This is but a small step in an effort to make sure actual producers of food and fiber are able to own a farm and ranch for the sake of being producers. There are a number of places where they're being sold for subdivisions or other development purchases, or sold as trophy ranches. They're being priced out of the market where anybody can ever cash flow for raising of grain or livestock. At some point all of the agricultural land in this state and around the country is

going to be owned by people who are not the primary producers. Actual producers are going to end up being tenants working for somebody else. Then we start getting in rural America the same dysfunction we had in urban American, where people have lived on property they've not owned for generations.

We have to start somewhere. This bill is but a small step in the effort to keep agricultural lands in the hands of agriculture producers. If the development rights on an acre of land near one of our cities is a thousand dollars, four million dollars is only going to get you four thousand acres. That's not very much.

SENATOR DEVLIN You're telling some guy how good this is and it might save his ranch or farm. You get some seed money, gather up more money for this easement. You've really sold part of your property when you give up that easement, even though it might be term. All you've done really is just given him enough money so in a few years he's in trouble again, because agriculture and his operation are not changing. What you've really done is taken away part of his equity. Unless he changes his operation or the market changes dramatically, this is nothing but leading somebody down the primrose path and lessening his equity in the place he's got. He's probably better off to sell it now and go.

SENATOR TESTER **SENATOR DEVLIN** is correct, but remember that it is voluntary. I don't think there's anybody at this table who doesn't realize what the real problem is. This is a step in the right direction.

SENATOR JERGESON The way the Board is set up and with the super majority, they would check if this a bail out of a poor manager. We looked at real estate ads and what some of the ranches are priced at. Nobody wanting to buy these places is intent on operating those places raising cattle. They couldn't get the financing raising cattle and can't possibly make the cash flow. Here's another guy with lots of money who doesn't care if he loses money. He'll have some tenants out there running cattle and the tenants will lose the opportunity to ever own property. You might, in some limited cases, be able to put this together with a bright young person who would like to raise cattle and bridge the gap between what this land is going for nonagricultural or trophy purposes and what a person could make cash flow as an agricultural unit.

SENATOR EKEGREN Is there a tax liability for these ranchers and farmers.

SENATOR BECK Somebody is going to sell the easement, donate the easement to the agriculture people for three or four hundred

thousand dollars, sell the property and take a tax write off. What **SENATOR JERGESON** said about being a nice guy and selling to the young guy is ideal. But somebody's going to sell that agricultural easement, turn right around and sell it to the Californian coming up here wanting a game preserve. He's going to get just as much money out of it before he sold the easement because that Californian isn't interested in the agricultural purposes of that ranch. A lot of these ranches in western Montana are running into that situation. They're not buying them for the grazing value.

SENATOR HALLIGAN The owner of the property still pays the property tax even though the state owns the easement?

Mona Jamison Part of the criteria is to maintain the land in productivity. On that particular issue, given the limited funds even with the benefits that might come in with the leveraging, the purpose is to keep the land in productivity and to help farmers and ranchers out. The criteria in the bill address the things that you have to consider. The emphasis is really a vehicle to help keep the land in productivity. That's why there's the super majority, to make sure with the limited funds those goals can be achieved to the extent possible.

SENATOR DEVLIN Is there anything in this bill that prohibits that?

SENATOR BECK There's nothing in here that says it has to stay in production. All it does in this bill is say you can't subdivide. I don't think there's anything that says you have to grow wheat on this particular ground.

Mona Jamison One of the values the commission has to consider is the threat of conversion of the property from traditional agricultural use. When the farmer or rancher puts together their deal, they're going to have to demonstrate what the threat is of conversion and be able to show the commission how this deal prevents that threat from occurring. The way this is structured with the criteria on page 4, the intent is to keep the land in productivity.

SENATOR HALLIGAN I want to make sure it's still on the record that putting three people in there with a veto is a bad idea. (Turn Tape) It hasn't worked in lots of other areas.

SENATOR NELSON What if someone in financial difficulties takes this conservation easement, gets the money and still goes belly up in a couple years. What happens then with this easement, is it committed to whomever takes over the farm?

SENATOR DEVLIN It's a blot on the title.

{Tape : 1; Side : B; Approx. Time Counter : 4.09}

SENATOR JERGESON For the last two years I've been a member of the Montana Consensus Council and the Council authorized this particular process that this bill comes from. About a year and a half ago I think some of our farm groups, particularly Farm Bureau, were kind of at the point where a number of members of this committee were highly skeptical about this whole thing and had some pretty severe questions. I didn't go to any meetings but I got monthly updates and I think they got their questions, same as the ones asked today, satisfied in the process. It's a very limited scope project but it's in some respects kind of a pilot project to see how this works and whether it really does have an application for the long term in Montana. With the sunset on it, I think we ought to proceed.

CHAIRMAN JABS A person could sell his place and the easement goes with it, right.

Mona Jamison Yes, the easement and the terms of the easement, be it term or permanent, goes with the land.

CHAIRMAN JABS It isn't necessarily to keep it a family farm but to keep it in production.

Mona Jamison You can look at whether the cup is half full or half empty. The intent with this bill is for farmers and ranchers who are land rich and cash poor, want to keep their land in productivity and be able to pass it down. Sometimes getting \$250,000 to sit in the bank for the agreement to continue doing with the land what they've been doing is enough. That's the underlying principle of the bill. If they were to sell it, the easement runs with the land. The benefits are that land remains open space. The intent is to help farmers and ranchers out. And that's why, as **SENATOR JERGESON** pointed out, it has a sunset. It's to see, does it work, can the shoe fit Montana and help our people.

CHAIRMAN JABS Explain the term easement.

Mona Jamison It's defined in law and it's referenced in the definition section of the bill on page two. It also, in addition to those criteria, has to meet the core values of this act which are set forth on the top of page four. You'll notice the first one is conservation of family farms, ranches and forest lands. Other states have done this and found it to be quite successful in saving agricultural land and keeping it in the family.

CHAIRMAN JABS You mean you can sign up for five years, ten years. I'll never put this into a lifetime easement because if I have an island here and they're building all around me, pretty soon that property is going to go up in value two, four, ten times. I'm going to sign up for ten years, hold it until I can triple my price on it.

Mona Jamison The market will determine the value of the easement. The conservation easement statute that is referenced on page two of this bill allows a court to extinguish even a permanent easement if it no longer serves the purpose for which it was intended. This bill also requires regional diversity in terms of how these go out.

SENATOR BECK I don't think the commission would be interested in purchasing a very expensive lease for just a twenty year period of time. I think they're looking for perpetuity.

Mona Jamison Of course the goal is going to be to preserve land as long as possible, which would be the permanent easement. However there are circumstances where short term, a farmer or rancher needs the time to examine where he's going and what his options are, which could lead to sale or to permanent easement.

SENATOR DEVLIN When you put this lien on the title, and it is a lien, a blot on the title, that's in the name of this commission.

Mona Jamison Yes, they take second position.

SENATOR DEVLIN When this sunsets, who has it then? Who has it then if this commission is sunsetted.

Mona Jamison The qualified easement holder, which is also defined in the definitions sections, has the right to enforce the easement as with the existing statute. It could be the Land Alliance, Nature Conservancy.

SENATOR BECK How about the State of Montana?

Mona Jamison They take the second position when the qualified easement holder is one of the groups I just mentioned. Should there be a failing of the terms of the easement, that second position, which would frankly be DNRC, would take on that obligation.

SENATOR NELSON Let's say that I'm in financial difficulties but I really want to stay in farming and I convinced the commission. To get myself out of debt, you settle with me for a lump sum payment so I can get back on my feet. It turns out after a

couple years I still go belly up. The land is not mine anymore and the next person is burdened with this easement, even though I've received the money?

Mona Jamison This is a totally voluntary program. If for some reason there is a sale or it goes belly up, the easement, as with any other condition, runs with the land. At that point, I would suggest that the subsequent purchaser who didn't like the easement wouldn't purchase the land.

SENATOR BECK What if your bank came to you and said sell this easement, because they have first lien on the property and want some money out of it, then they turn around and foreclose on you. What would happen in that case?

Mona Jamison Under the conservation easement statute that's referenced in here, there would be a petition to the court to demonstrate that the fundamental purpose of the easement could no longer be served. Assuming that the courts are reasonable in this state, that they would respond.

CHAIRMAN JABS How about the man who sold the easement, spent the money, is broke again and sells the land. The fellow who buys it then just has to pay what he thinks it's worth.

SENATOR JERGESON The point is the person who then purchases that land because all it has is agricultural value, might be able to buy the land at a price he can cash flow, instead of trying to run cows and pay \$500 an acre for land you can only run cows on if all you have to pay for it is \$50. Maybe the next purchaser can get it at that price and be able to do it. Maybe you have a ranch with subdivision or development value worth a huge fortune. You want to turn it over to your kids but they'll get hit with inheritance tax. You create the easement and the residual value is all you're faced with. You can transfer it to your kids and they can stay in agriculture.

{Tape : 1; Side : B; Approx. Time Counter : 4.23}

SENATOR EKEGRAN I've been involved in a bank for 25 years and I know how some of this can work. You're doing no favors by bailing a farmer or somebody in trouble out temporarily. If he's going to go broke in five years, he's going broke and his asset is worth less money. People who get involved in this are people who are cash poor. You might be better off to liquidate now as to wait five years, take an easement, go broke and have an asset that's worth 33% less.

SENATOR MCNUTT If you're going to get an easement payment, your bank is going to be right there taking the bulk of that to reduce the real estate loan down to a reasonable size. You have obligations this money is going to pay down. In the end, your interest expense is going down, your cost of doing business is down, and it may be a lot easier for you as a banker to get along with that customer three or four years down the road because he's not going to be so leveraged.

SENATOR BECK It wouldn't be any different than selling forty acres off that piece of ground. If you sell any rights or interest on that land, the bank will come in first.

SENATOR EKEGREN if all you're doing is stalling them off, his asset instead of being worth \$300/acre is only worth \$200. There's no doubt in my mind that anybody financially sound would not go to Mona for a bailout.

SENATOR BECK When you get a farmer really desperate, all of a sudden he sees this program. If he had just enough to satisfy the banker for this year. He sells that easement that may be worth \$300,000 for \$50,000 so he can pay off the bank. All of a sudden he's done something that's really crippled him.

SENATOR MESAROS How would the program be compromised if the perpetuity easements were withdrawn and go into term easements where you could spread that over more easements because they obviously have less value?

Mona Jamison I think that would be the end of the consensus. I have to urge that be rejected because at that point even if the bill came out of the committee, I think it would meet its demise.

SENATOR HALLIGAN I wish I would have had more time to do some sort of amendment to deal with the issues I talked about earlier. I think the public access issues are huge here.

CHAIRMAN JABS If the money is taken out of HB 2, the bill still survives but with no money.

SENATOR BECK It gives them the authority, anyway, to set up the commission. I don't intend to take all the money out. I would say a start up of \$500,000 or a million dollars, but not the four million.

Vote: Motion **carried 9-2 with Devlin and Beck voting no.**
Roll call vote.

ADJOURNMENT

Adjournment: 4:32 P.M.

SEN. REINY JABS, Chairman

CAROL MASOLO, Secretary

RJ/CM

EXHIBIT (ags37aad)